

OIEP under § 30.110. In providing assistance, the Secretary may consult with the Secretary of Education and may use funds supplied by the Secretary of Education in accordance with 20 U.S.C. 7301.

**§ 30.110 What is the process for requesting technical assistance to develop an alternative definition of AYP?**

(a) The tribal governing body or school board requesting technical assistance to develop an alternative definition of AYP must submit a written request to the Director of OIEP, specifying the form of assistance it requires.

(b) The Director of OIEP must acknowledge receipt of the request for technical assistance within 10 days of receiving the request.

(c) No later than 30 days after receiving the original request, the Director of OIEP will identify a point of contact. This contact will immediately begin working with the tribal governing body or school board to jointly develop the specifics of the technical assistance, including identifying the form, substance, and timeline for the assistance.

**§ 30.111 When should the tribal governing body or school board request technical assistance?**

In order to maximize the time the tribal governing body or school board has to develop an alternative definition of AYP and to provide full opportunity for technical assistance, the tribal governing body or school board should request technical assistance before formally notifying the Secretary of its intention to waive the Secretary's definition of AYP.

**APPROVAL OF ALTERNATIVE DEFINITION**

**§ 30.113 How does the Secretary review and approve an alternative definition of AYP?**

(a) The tribal governing body or school board submits a proposed alternative definition of AYP to the Director, OIEP within 60 days of its decision to waive the Secretary's definition.

(b) Within 60 days of receiving a proposed alternative definition of AYP, OIEP will notify the tribal governing body or the school board of:

(1) Whether the proposed alternative definition is complete; and

(2) If the definition is complete, an estimated timetable for the final decision.

(c) If the proposed alternative definition is incomplete, OIEP will provide the tribal governing body or school board with technical assistance to complete the proposed alternative definition of AYP, including identifying what additional items are necessary.

(d) The Secretaries will review the proposed alternative definition of AYP to determine whether it is consistent with the requirements of 20 U.S.C. 6311(b). This review must take into account the unique circumstances and needs of the schools and students.

(e) The Secretaries shall approve the alternative definition of AYP if it is consistent with the requirements of 20 U.S.C. 6311(b), taking into consideration the unique circumstances and needs of the school or schools and the students served.

(f) If the Secretaries approve the alternative definition of AYP:

(1) The Secretary shall promptly notify the tribal governing body or school board; and

(2) The alternate definition of AYP will become effective at the start of the following school year.

(g) The Secretaries will disapprove the alternative definition of AYP if it is not consistent with the requirements of 20 U.S.C. 6311(b). If the alternative definition is disapproved, the tribal governing body or school board will be notified of the following:

(1) That the definition is disapproved; and

(2) The reasons why the proposed alternative definition does not meet the requirements of 20 U.S.C. 6311(b).

(h) If the Secretaries deny a proposed definition under paragraph (g) of this section, they shall provide technical assistance to overcome the basis for the denial.

**Subpart B—Assessing Adequate Yearly Progress**

**§ 30.114 Which students must be assessed?**

All students in grades three through eight and at least once in grades ten

## § 30.115

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through twelve who are enrolled in a Bureau-funded school must be assessed.

### § 30.115 Which students' performance data must be included for purposes of AYP?

The performance data of all students assessed pursuant to § 30.114 must be included for purposes of AYP if the student is enrolled in a Bureau-funded school for a full academic year as defined by the Secretary or by an approved alternative definition of AYP.

### § 30.116 If a school fails to achieve its annual measurable objectives, what other methods may it use to determine whether it made AYP?

A school makes AYP if each group of students identified in § 30.107(b)(6) meets or exceeds the annual measurable objectives and participation rate identified in §§ 30.107(b)(9) and 30.107(b)(12) respectively, and the school meets the other academic indicators identified in § 30.107(b)(11). If a school fails to achieve its annual measurable objectives for any group identified in § 30.107(b)(6), there are two other

methods it may use to determine whether it made AYP:

(a) *Method A—“Safe Harbor.”* Under “safe harbor,” the following requirements must be met for each group referenced under § 30.107(b)(6) that does not achieve the school's annual measurable objectives:

(1) In each group that does not achieve the school's annual measurable objectives, the percentage of students who were below the “proficient” level of academic achievement decreased by at least 10 percent from the preceding school year; and

(2) The students in that group made progress on one or more of the other academic indicators; and

(3) Not less than 95 percent of the students in that group participated in the assessment.

(b) *Method B—Uniform Averaging Procedure.* A school may use uniform averaging. Under this procedure, the school may average data from the school year with data from one or two school years immediately preceding that school year and determine if the resulting average makes AYP.

## Subpart C—Failure To Make Adequate Yearly Progress

### § 30.117 What happens if a Bureau-funded school fails to make AYP?

| Number of yrs of failing to make AYP in same academic subject | Status                        | Action required by entity operating school for the following school year   |
|---|-------------------------------|--|
| 1st year of failing AYP                                       | No status change .....        | Analyze AYP data and consider consultation with outside experts.   |
| 2nd year of failing AYP                                       | School improvement, year one. | Develop a plan or revise an existing plan for school improvement in consultation with parents, school staff and outside experts.   |
| 3rd year of failing AYP                                       | School Improvement, year two. | Continue revising or modifying the plan for school improvement in consultation with parents, school staff and outside experts.     |
| 4th year of failing AYP                                       | Corrective Action .....       | Implement at least one of the six corrective actions steps found in 20 U.S.C. 6316(b)(7)(C)(iv).                                   |
| 5th year of failing AYP                                       | Planning to Restructure       | Prepare a restructuring plan and make arrangements to implement the plan.  |
| 6th year of failing AYP                                       | Restructuring .....           | Implement the restructuring plan no later than the beginning of the school year following the year in which it developed the plan. |
| 7th year (and beyond) of failing AYP.                         | Restructuring .....           | Continue implementation of the restructuring plan until AYP is met for two consecutive years.                                      |

### § 30.118 May a Bureau-funded school present evidence of errors in identification before it is identified for school improvement, corrective action, or restructuring?

Yes. The Bureau must give such a school the opportunity to review the data on which the bureau would iden-

tify a school for improvement, and present evidence as set out in 20 U.S.C. 6316(b)(2).